Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Message Text

PAGE 01 STATE 100423 TOSEC 110120

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C O N F I D E N T I A L STATE 100423 TOSEC 110120

E.O. 11652:

TAGS: PLOS

SUBJECT: LOS: U.S. POSITION ON ARTICLE 136

REF: 100422 (STATE)

FOR LORD FROM VELIOTES

1. SPRINGSTEEN/SCOWCROFT (7608654) DATED APRIL 24, 1976

2. ARTICLE 136 OF THE SINGLE NEGOTIATING TEXT PROVIDES:

3. THE RIGHTS RECOGNIZED OR ESTABLISHED BY THE PRESENT CONVENTION TO THE RESOURCES OF A TERRITORY WHOSE PEOPLE HAVE NOT ATTAINED EITHER FULL INDEPENDENCE OR SOME OTHER SELF-GOVERNING STATUS RECOGNIZED BY THE UNITED NATIONS OR A TERRITORY UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION OR A UNITED NATIONS TRUST TERRITORY OR A TERRITORY ADMINISTERED BY THE UNITED NATIONS SHALL BE VESTED IN THE INHABITANTS OF THAT TERRITORY, TO BE EXER-CISED BY THEM FOR THEIR OWN BENEFIT AND IN ACCORDANCE
CONFIDENTIAL

PAGE 02 STATE 100423 TOSEC 110120

WITH THEIR OWN NEEDS AND REQUIREMENTS.

4. WHERE A DISPUTE OVER THE SOVEREIGNTY OF A TERRITORY UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION EXISTS,

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

THE RIGHTS REFERRED TO IN PARAGRAPH 3 SHALL NOT BE EXERCISED UNTIL SUCH DISPUTE IS SETTLED IN ACCORDANCE WITH THE PURPOSES AND PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS.

5. IN NO CASE MAY THE RIGHTS REFERRED TO IN PARAGRAPH 3 BE EXERCISED, PROFITED OR BENEFITED FROM OR IN ANY WAY INFRINGED BY A METROPOLITAN OR FOREIGN POWER ADMINISTERING OR OCCUPYING SUCH TERRITORY OR PURPORTING TO ADMINISTER OR OCCUPY SUCH TERRITORY.

6. REFERENCE IN THIS ARTICLE TO A TERRITORY INCLUDE CONTINENTAL AND INSULAR TERRITORIES.

7. THE EFFECT OF THIS PROVISION WOULD BE TO VEST EXCLUSIVE RIGHTS OF OWNERSHIP, EXPLOITATION AND REGULATIONS OR RESOURCES IN THE ECONOMIC ZONE ESTABLISHED BY THE TREATYIN THE INHABITANTS OF THE VARIOUS TYPES OF TERRITORIES DESCRIBED IN THE ARTICLE. THE COLONIAL OR METROPOLITAN STATE WOULD BE PROHIBITED FROM DERIVING ANY BENEFIT FROM SUCH RESOURCES.

8. IN THE U.S. CASE, THE ARTICLE AS NOW DRAFTED WOULD EXCLUDE FROM FEDERAL CONTROL THE ECONOMIC ZONES AROUND THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND THE TRUST TERRITORY OF THE PACIFIC ISLAND (MICRONESIA). IT WOULD NOT, HOWEVER, APPLY TO PUERTO RICO.

9. THE PREFERRED U.S. POSITION HAS BEEN TO SEEK DELETION OF THE ENTIRE ARTICLE. THE DELEGATION'S REPORT, HOWEVER, THAT WE ARE NOW ISOLATED ON THIS POSITION, AND THE ARTICLE MAY BE ADOPTED BY THE CONFERENCE ESSENTIALLY IN ITS PRESENT FORM UNLESS A COMPROMISE CAN BE ADVANCED. (OUR DELEGATION UNDERSTANDS THAT THE DUTCH MAY INTRODUCE AN AMENDMENT TO BROADEN THE ARTICLE'S COVERAGE TO INCLUDE SELF-GOVERNING BUT NON-INDEPENDENT AREAS SUCH AS THE NETHERLANDS ANTILLES. THIS WOULD PROBABLY HAVE THE EFFECT OF EXTENDING THE CONFIDENTIAL

COVERAGE OF THE ARTICLE TO PUERTO RICO AS WELL AS TO THE U.S. AREAS MENTIONED ABOVE. THE PUERTO RICAN ASPECT IS DISCUSSED SEPARATELY BELOW.)

10. THE LOS TREATY WILL NOT PROVIDE FOR RESERVATIONS; IF NO COMPROMISE CAN BE REACHED, WE WILL BE FACED WITH THE PROSPECT OF RATIFYING A TREATY INCLUDING ARTICLE 136 OR OF REJECTING THE ENTIRE TREATY. IN SHORT, CONTINUED OPPOSITION TO ARTICLE 136 IN ITS ENTIRETY WOULD BE A FUTILE GESTURE UNLESS WE ARE PREPARED TO SCRAP THE ENTIRE LOS TREATY OVER THIS ISSUE.

11. PROPOSED COMPROMISE

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

THE INTERESTED BUREAUS WITHIN THE DEPARTMENT AND THE U.S. DELEGATION IN NEW YORK HAVE FORMULATED A PACKAGE OF AMENDMENTS TO ARTICLE 136, WHICH, IF SUCCESSFUL, WOULD ELIMINATE OR MITIGATE THOSE ASPECTS MOST OBJECTIONABLE TO THE U.S. THE AMENDED TEXT WOULD READ AS FOLLOWS:

12. THE RIGHTS RECOGNIZED OR ESTABLISHED BY THE PRESENT CONVENTION TO THE RESOURCES OF A TERRITORY WHOSE PEOPLE HAVE NOT ATTAINED EITHER FULL INDEPENDENCE OR SOME OTHER SELF-GOVERNING STATUS RECOGNIZED BY THE UNITED NATIONS OR A TERRITORY UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION OR A UNITED NATIONS TRUST TERRITORY OR A TERRITORY ADMINISTERED BY THE UNITED NATIONS OR AN ASSOCIATED STATE NOT FULLY INDEPENDENT, SHALL BE EXERCISED FOR THE BENEFIT OF THE INHABITANTS OF THE RESPECTIVE TERRITORY IN ACCORDANCE WITH THEIR OWN NEEDS AND REQUIREMENTS AND IN ACCORDANCE WITH APPLICABLE AGREEMENTS.

13. WHERE A DISPUTE OVER THE SOVEREIGNTY OF A TERRITORY UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION EXISTS, THE RIGHTS REFERRED TO IN PARAGRAPH 12 SHALL NOT BE EXERCISED UNTIL SUCH DISPUTE IS SETTLED IN ACCORDANCE WITH THE PURPOSES AND PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS.

14. REFERENCES IN THIS ARTICLE TO A TERRITORY INCLUDE CONTINENTAL AND INSULAR TERRITORIES.
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15. THE EFFECT OF THESE AMENDMENTS WOULD BE TO ELIMINATE THE CONCEPT OF VESTING EXCLUSIVE RIGHTS OF OWNERSHIP, EXPLOITATION, AND REGULATION IN THE TERRITORIES, WHILE RETAINING THE GENERAL PRINCIPLE THAT THE U.S. RIGHTS IN THE ECONOMIC ZONE AROUND THE TERRITORIES SHOULD BE EXERCISED FOR THEIR BENEFIT. THE AMENDED TEXT WOULD ALSO PROVIDE FOR IMPLEMENTATION OF THIS PRINCIPLE THROUGH AGREEMENTS BETWEEN THE METROPOLITAN STATE AND THE TERRITORIES (E.G., THE PROPOSED COMMONWEALTH COMPACTS WITH PUERTO RICO AND THE MARIANAS.)

16. IMPLICATION FOR STATUS OF U.S. TERRITORIES

ARTICLE 136, AS IT IS NOW DRAWN, WOULD, IN EFFECT, GIVE U.S. TERRITORIES COMPLETE AUTHORITY OVER THE ECONOMIC ZONE SURROUNDING THEM. IRRESPECTIVE OF WHETHER THIS WOULD BE A DESIRABLE RESULT ON THE MERITS, IT HAS BEEN OUR POSITION THAT AN INTERNATIONAL AGREEMENT IS NOT A PROPER INSTRUMENT FOR ESTABLISHING JURISDICTIONAL RELATIONSHIPS BETWEEN A

STATE AND ITS TERRITORIES.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

17. ALTHOUGH THE ENTRY INTO FORCE OF A PROVISION SUCH AS THE PRESENT ARTICLE 136 WOULD NOT AFFECT THE FUNDAMENTAL STATUS OF OUR TERRITORIES AS AREAS UNDER U.S. SOVEREIGNTY, IT WOULD IMPOSE RATHER SEVERE LIMITATIONS ON THE EXERCISE OF OUR SOVEREIGNTY OVER THE ECONOMIC ZONES SURROUNDING THESE AREAS. THE AMENDMENTS WE ARE CONSIDERING WOULD SUBSTANTIALLY MITIGATE THE LIMITATIONS ON OUR EXERCISE OF SOVEREIGNTY. MOREOVER, THEY WOULD BE REASONABLY CONSISTENT WITH THE TYPE OF ROLE THE U.N. AND OTHER INTERNATIONAL BODIES HAVE TRADITIONALLY PLAYED WITH RESPECT TO THE INTERNAL PRACTICES OF A STATE BY ESTABLISHING A GENERAL PRINCIPLE OR GOAL TO BE IMPLEMENTED BY EACH STATE IN ACCORDANCE WITH ITS OWN PROCEDURES (E.G., THE CONVEN-TIONS ON HUMAN RIGHTS AND ON POLITICAL AND CIVIL RIGHTS).

18. EFFECTS ON EXISTING U.S. LAW AND RATIFICATION OF THE TREATY

CONFIDENTIAL

PAGE 05 STATE 100423 TOSEC 110120

UPON THE ENTRY INTO FORCE OF THE LOS TREATY, ITS PROVISIONS WOULD SUPERSEDE ANY INCONSISTENT PROVISIONS IN PRIOR U.S. LAW. THE U.S. LAW MOST DIRECTLY RELATED TO THE AREA ENCOMPASSED BY THE ECONOMIC ZONE CONTEMPLATED IN THE LOS TREATY ARE THE RECENT FISHERY CONSERVATION AND MANAGEMENT ACT 1976 (PL-94-265) (AND THE OUTER CONTINENTAL SHELF LANDS ACT). THESE STATUTES VEST IN THE FEDERAL GOVERNMENT EXCLUSIVE MANAGEMENT AUTHORITY IN THE ECONOMIC ZONES AND CONTINENTAL SHELVES OF THE SEVERAL STATES, THE VIRGIN ISLANDS, PUERTO RICO, AMERICAN SAMOA, GUAM, AND "ANY OTHER COMMONWEALTH, TERRITORY OR POSSESSION OF THE U.S."

19. THE TEXT OF ARTICLE 136 AS IT STANDS WOULD BE INCONSISTENT WITH THESE ACTS INASMUCH AS IT WOULD PLACE MANAGEMENT CONTROL EXCLUSIVELY WITH THE COMPETENCE OF THE TERRITORIES. THIS COULD HAVE A DIRECT IMPACT ON EVENTUAL RATIFICATION OF THE TREATY IF IMPORTANT COASTAL STATES (TEXAS, LOUISIANA, ALASKA, FLORIDA) FELT THE TREATY WAS GRANTING ECONOMIC RIGHTS TO THE TERRITORIES GREATER THAN THOSE AFFORDED THE STATES THEMSELVES. THE AMENDED TEXT IS SOMEWHAT OF A COMPROMISE IN THAT IT WOULD NOT PRECLUDE MANAGEMENT CONTROL TO THE FEDERAL GOVERNMENT, BUT WOULD ESTABLISH THAT CONTROL SHOULD BE EXERCISED FOR THE BENEFIT OF THE INHABITANTS OF THE TERRITORIES. ACCORDINGLY, THE AMENDED VERSION WOULD NOT CONTRADIC THE EXISTING LEGISLATION, BUT WOULD ADD A NEW DIMENSION TO IT.

20. THE ECONOMIC BENEFITS ACCRUING TO PUERTO RICO UNDER THE PROPOSED CHANGES TO ARTICLE 136 WOULD BE SUBJECT TO THE "APPLICABLE AGREEMENTS" LANGUAGE. THIS MEANS THAT THE REVENUES PUERTO RICO WOULD DERIVE FROM EXPLOITATION OF THE 200-MILE ECONOMIC ZONE WOULD BE A MATTER FOR REGULA-

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

TION BY THE UNITED STATES GOVERNMENT IN A MANNER CONSISTENT WITH OUR OVERALL RELATIONSHIP WITH PUERTO RICO AND POSSIBLE ALONG THE LINES OF CURRENT ARRANGEMENTS WHEREBY PUERTO RICO COLLECTS TAXES AND RETAINS THEM FOR HER OWN BENEFICIAL USE.

21. COMMITTEE OF 24 -- THE PUERTO RICO COLONIAL ISSUE

ANOTHER DIMENSION OF THE PROBLEM CONCERNS THE POLITICAL
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PAGE 06 STATE 100423 TOSEC 110120

RELATIONSHIP BETWEEN THE COMMONWELATH OF PUERTO RICO AND THE U.S., AND CUBA'S EFFORTS TO HAVE RELATIONSHIP BRANDED AS "COLONIALIST" BY THE U.N. RESOLUTION IN THE U.N. COMMITTEE OF 24 BY A NARROW VOTE. WE EXPECT THE ISSUE TO BE RE-RAISED IN AUGUST; DISPOSING OF IT SUCCESSFULLY IN THE COMMITTEE IS A HIGH PRIORITY ITEM FOR THE U.S.

22. THE ISSUE OF CONTROL OF NATURAL RESOURCES APPEARS TO BE READILY EXPLOITABLE IN THE CONTEXT OF COLONIALIST ALLEGATIONS. ARTICLE 136, AS IT STANDS, PRESENTS THE FOLLOWING OPTIONS TO THE COMMONWEALTH OF PUERTO RICO. EITHER IT WOULD ACCEPT FOR ITSELF A SITUATION INFERIOR TO "NON-SELF-GOVERNING" TERRITORIES SUCH AS THE U.S. VIRGIN ISLANDS, OR IT COULD CLAIM THE RESOURCES BY ASSERTING ITSELF TO BE IN SOME SORT OF "COLONY" STATUS. THE LATTER WOULD, OF COURSE, EFFECTIVELY DESTROY OUR POSITION IN THE COMMITTEE OF 24. THE PUERTO RICAN GOVERNMENT HAS PROPOSED THAT WE BROADEN THE ARTICLE TO INCLUDE "ASSOCIATED STATES." THIS WOULD EFFECTIVELY NEUTRALIZE THE POLITICAL PROBLEM. (AS INDICATED ABOVE, THE DUTCH MAY IN ANY EVENT INTRODUCE AN AMENDMENT HAVING THIS EFFECT BECAUSE OF THEIR DESIRE TO INCLUDE THE NETHERLANDS ANTILLES IN 136.)

23. THE U.S. POSITION ON ARTICLE 136 WILL BE CLOSELY WATCHED BY THE CUBANS AND OTHERS. ANY ACTIONS ON OUR PART WHICH APPEAR TO FORECLOSE BENEFITS TO PUERTO RICO WILL WEAKEN OUR STRONGEST ARGUMENT -- THAT THE ASSOCIATION WITH THE COMMONWEALTH IS ONE OF FREE ASSOCIATION BASED ON PUERTO RICAN SELF-DETERMINATION. OUR POSITION ON PUERTO RICO WILL BE FURTHER HIGHLIGHTED BY THE FACT THAT EVERY OTHER U.S. TERRITORY WOULD BE COVERED BY THE PRESENT ARTICLE.

24. CONCLUSION

A CONTINUED POSITION IN FAVOR OF DELETING ARTICLE 136 IN ITS ENTIRETY WOULD BE FRUITLESS, AND WOULD ONLY SERVE TO ISOLATE THE U.S. IN THE CONFERENCE. A U.S. ATTEMPT TO AMEND THE ARTICLE, ALTHOUGH IT MAY NOT BE ENTIRELY SUCCESSFUL, SHOULD AT LEAST TEND TO RESULT IN AN IMPROVED TEXT FROM OUR STANDPOINT. WE BELIEVE THAT THE DISPOSITION OF

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

THE SENATE TO GIVE ITS ADVICE AND CONSENT TO RATIFICATION
OF THE RESULTANT TREATY WILL BE IMPROVED TO THE EXTENT
THAT OUR PROPOSED CHANGES TO ARTICLE 136 ARE INCORPORATED
IN THE TREATY. MOREOVER, SUCH AN EFFORT ON OUR PART
SHOULD DEFUSE ANY POSSIBILITY OF PLAYING INTO THE CUBANS
HANDS WITH RESPECT TO THE PUERTO RICO ISSUE.

25. RECOMMENDATION

THAT YOU APPROVE THE ATTACHED CABLE INSTRUCTING OUR
DELEGATION TO INTRODUCE THE PROPOSED PACKAGE OF AMENDMENTS
TO ARTICLE 136.

26. PROPOSED TELEGRAM

ACTION: USUN
E.O. 11652:GDS
TAGS: PLOS
SUBJECT: LOS -- PUERTO RICAN REPRESENTATION ON LOS DEL
AND ARTICLE 136
REF: (A) STATE 97193; (B) USUN 1707

27. YOU ARE AUTHORIZED TO PROPOSE THE AMENDMENTS TO
ARTICLE 136 WHICH WERE OUTLINED IN REFTEL A, WITH THE
FOLLOWING CLARIFICATIONS. (A) YOU ARE AUTHORIZED BUT NOT
REQUIRED PUBLICLY TO SEEK DELETION OF PARA. 2 OF ARTICLE
136; YOU SHOULD COOPERATE WITH OTHERS WHO FAVOR ITS
DELETION (B) AS YOU HAVE SUGGESTED IN REFTEL B, THE WORD
"OR POSSESSIONS" MAY BE DROPPED FROM OUR PROPOSED
AMENDMENT. (C) YOU MAY PROPOSE ADDITION OF THE WORDS
"NON-INDEPENDENT TERRITORIES AND" TO THE TITLE.

28. WE BELIEVE THAT INSERTION OF THE WORD "EXCLUSIVE"
BEFORE "BENEFIT" IN PARA.1 WOULD TEND TO UNDERMINE THE
THE PURPOSE OF OUR ATTEMPT TO DELETE THE REFERENCE TO
RIGHTS VESTING IN THE INHABITANTS OF THE TERRITORIES.
THEREFORE, YOU SHOULD NOT INCLUDE IT.

29. REVISED TEXT IS NOW AS FOLLOWS:

30. ARTICLE 136
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THE RIGHTS RECOGNIZED OR ESTABLISHED BY THE PRESENT
CONVENTION TO THE RESOURCES OF A TERRITORY WHOSE PEOPLE
HAVE NOT ATTAINED EITHER FULL INDEPENDENCE OR SOME OTHER
SELF-GOVERNING STATUS RECOGNIZED BY THE UNITED NATIONS
OR A TERRITORY UNDER FOREIGN OCCUPATION OR COLONIAL

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

DOMINATION OR A UNITED NATIONS TRUST TERRITORY OR A TERRITORY ADMINISTERED BY THE UNITED NATIONS OR AN ASSOCIATED STATE NOT FULLY INDEPENDENT, SHALL BE EXERCISED FOR THE BENEFIT OF THE INHABITANTS OF THE RESPECTIVE TERRITORY IN ACCORDANCE WITH THEIR OWN NEEDS AND REQUIREMENTS AND IN ACCORDANCE WITH APPLICABLE AGREEMENTS.

31. WHERE A DISPUTE OVER THE SOVEREIGNTY OF A TERRITORY UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION EXISTS, THE RIGHTS REFERRED TO IN PARAGRAPH 30 SHALL NOT BE EXERCISED UNTIL SUCH DISPUTE IS SETTLED IN ACCORDANCE WITH THE PURPOSES AND PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS.

32. REFERENCES IN THIS ARTICLE TO A TERRITORY SHOULD INCLUDE CONTINENTAL AND INSULAR TERRITORIES. EAGLEBURGER

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